

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF CHATTANOOGA GAS)
COMPANY, FOR APPROVAL OF)
ADJUSTMENT OF ITS RATES AND)
CHARGES AND REVISED TARIFF)
)
)

DOCKET NO. 04-00034

**MOTION TO COMPEL DISCOVERY RESPONSES FROM THE CONSUMER
ADVOCATE AND PROTECTION DIVISION**

COMES NOW Petitioner Chattanooga Gas Company (the "Company"), pursuant to Rule 1220-1-2-.09 of the Tennessee Regulatory Authority ("TRA") and Rule 37 of the Tennessee Rules of Civil Procedure, and hereby files this Motion to Compel Discovery Responses from the Consumer Advocate and Protection Division of the Office of Tennessee Attorney General ("CAPD").

DEFINITIONS

1. CAPD means The Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General, its employees, agents, representatives, and all other persons acting or purporting to act on behalf of the CAPD.
2. The terms "you and "your" refer to the CAPD.
3. The term "person" means any natural person, corporation, corporate division, partnership, limited partnership, other unincorporated association, trust, government agency, or entity.

4. The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.

5. The term "identify" and "identity" as used herein, with respect to any person, means to provide their name, current business address, current business telephone number, and the occupation or job title of that person; with respect to an entity those terms mean to provide the legal name of the entity and any assumed names, the current address of the principal place of business, and the nature of business currently conducted by that entity; with respect to any document, those terms mean to provide the date of the document, the parties to the document (if any), the nature of the document and the title (if any) of the document.

INSTRUCTIONS

1. If you contend that any response to any data request may be withheld under the attorney-client privilege, the attorney work product doctrine, or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit a determination of the propriety of that claim:

- a) the privilege asserted and its basis;
- b) the nature of the information withheld;
- c) the date, title, number of pages, and subject matter of any document that is withheld as privileged (except to the extent that you claim that such information itself is privileged).
- d) the identity of the author(s) and/or preparer(s) and the address(es) (if any) of any document withheld as privileged.

2. These data requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

These data requests are intended to include requests for information which is physically within the CAPD's possession, custody or control as well as in the possession, custody or control of the CAPD's agents, attorneys, consultants or other third parties from which such documentation may be obtained.

3. If any data request cannot be responded to in full, answer to the extent possible and specify the reasons for your inability to respond fully. If you object to any part of a data request, answer all parts of the data request to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

4. These data requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these data requests subsequently become known.

5. The answer to each data request should first restate the question asked and also provide the name and title and business address of the person or persons supplying the information.

REASONS TO COMPEL SPECIFIC DATA REQUESTS

Request No. 1: Provide detailed workpapers, cross referenced to source documents, which show the computation of each amount on the CAPD's exhibits to be filed in this docket that is different from the corresponding amount presented on Chattanooga Gas Company's exhibits filed in this docket.

Response No. 1: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, no exhibits have been prepared. If exhibits are prepared, they will be attached to pre-filed testimony from a CAPD witness which will be provided to the Company. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits. Furthermore, any assessment of the differences between the testimony of the witnesses of the CAPD and the Company is the legal burden of each party and is, therefore, the work product of the party and subject to the work product doctrine and attorney-client privilege limiting discovery.

Reasons to Compel: As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to propound additional discovery requests after the testimony is filed.

Request No. 2: Provide copies of any written communications and complete details of any other communications that any member of the CAPD staff has had with any Chattanooga Gas Company customer or a consultant employed by any such customer relative to this docket. The information provided should include identification of the parties to the communication.

Response No. 2: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any Company customer or consultant employed by such customer would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify any customer of the Company that it has communicated with relative to this docket and the date of the communication.

Request No. 3: Produce copies of any written communications received by the CAPD from any Chattanooga Gas Company customer relative to this docket. The information provided should include identification of the parties to the communication.

Response No. 3: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any Company customer or consultant employed by such customer would be made as part of trial preparations

and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify any customer of the Company that it has communicated with relative to this docket and the date of the communication.

Request No. 4: Provide complete details of any discussions or communications that any CAPD employee or any witness that may appear on behalf of the CAPD in any hearing in this docket has had concerning this docket with any person not presently employed by the Office of the Tennessee Attorney General and Reporter, who is not a paid consultant of the CAPD. The information provided should include identification of the parties to the communication.

Response No. 4: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any Company customer or consultant employed by such customer, or other person, would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify person that it has communicated with relative to this docket and the date of the communication.

Request No. 5: Produce copies of any written communications relating to this docket that any CAPD employee or witness that may appear on behalf of the CAPD in any hearing in this docket issued to or received from any person not presently employed by the Office of the Tennessee Attorney General and Reporter, who is not a paid consultant of the CAPD. The information provided should include identification of the parties to the communication.

Response No. 5: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any Company customer or consultant employed by such customer, or other person, would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a

full response, the Company requests that the CAPD at a minimum be compelled to identify any person that it has communicated with relative to this docket and the date of the communication.

Request No. 6: Produce copies of all documents or things shown to, delivered to, received from, relied upon, or prepared by any witness that may appear on behalf of the CAPD in any hearing in this docket, which are related to the witness(es)' expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that witness for review in connection with testimony and opinions. Please indicate which witness identified in question 15 below received, relied upon or prepared the documents/information provided.

Response No. 6: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared, it will be provided to the Company when pre-filed testimony is filed and documents relied upon by the witnesses will be made available to the Company. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.

Reasons to Compel: As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to narrow its request once CAPD has filed its testimony.

Request No. 7: Produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any witness that may appear on behalf of the CAPD in any hearing in this docket in evaluating, reaching conclusions or formulating an opinion in this matter. Please indicate which witness identified in question 15 below received, relied upon or prepared the documents/information provided.

Response No. 7: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared, it will be provided to the Company when pre-filed testimony is filed and documents relied upon by the witnesses will be made available to the Company. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.

Reasons to Compel: As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to narrow its request once CAPD has filed its testimony.

Request No. 8: Produce copies of any and all testimony entered in any regulatory proceeding by any witness that may appear on behalf of the CAPD in any hearing in this docket.

Response No. 8: This request is overly broad and burdensome. Furthermore, there is no demonstration by the Company that all such testimony is relevant to this case. Finally, any such testimony is available in the public record at the TRA. Without waiving these objections, the CAPD has filed testimony in the following recent rate cases: Nashville Gas, TRA Docket No. 03-00313; and Tennessee American Water, TRA Docket No. 03-00118.

Reasons to Compel: This request does not seek information that is overly broad or burdensome. Further, the fact that such testimony is in the public record at the TRA is not a proper basis for objection. The Company does not know who the CAPD's witnesses will be. Some of the CAPD's witnesses may have testified in other jurisdictions. Even if the Company knew who the witnesses were, the records at the TRA are not indexed by witness names. Many records at the TRA are not on the agency's web site and cannot even be searched by company name.

Finally, even if the information were readily available in public records (which is not the case), the CAPD is the party that can verify the dockets in which the particular witnesses have testified. At a minimum, the CAPD should provide a list of dockets in which each of its witnesses have testified.

Request No. 9: Produce a copy of all articles or papers written by or co-written by any witness that may appear on behalf of the CAPD in any hearing in this docket, whether published or not.

Response No. 9: Such material as is available will be made available at the CAPD's office once witnesses has been determined.

Reasons to Compel: The CAPD's answer is vague and unresponsive.

Request No. 10: Produce copies of all surveys of Chattanooga Gas Company's or other regulated gas utility's customers conducted by or on behalf of the CAPD.

Response No. 10: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any surveys conducted by the CAPD would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify the name of any customer contacted, method of contact, and survey instrument. If the CAPD issues a survey to customers, the instrument is in the public domain and thus cannot be claimed as privileged.

Request No. 11: Produce copies of all stipulations or settlement agreements entered into by the CAPD and any public utility regulated by the Tennessee Regulatory Authority since 1996.

Response No. 11: This request is overly broad and burdensome. Furthermore, there is no demonstration by the Company that all such agreements or stipulations are relevant to this case. Finally, any such material is available in the public record at the TRA. Without waiving these objections, the CAPD has filed agreements in the following recent rate cases: Nashville Gas, TRA Docket No. 03-00313; and Tennessee American Water, TRA Docket No. 03-00118.

Reasons to Compel: This request does not seek information that is overly broad or burdensome. Further, the fact that such stipulations and settlement agreements are in the public record at the TRA is not a proper basis for objection. Without waiving its right to seek additional information in the future, the Company agrees to limit its present request to copies of all stipulations or

settlement agreements entered into between the CAPD and any regulated gas company since 1996.

Request No. 12: If the CAPD proposes a rate design that is different from the design proposed by Chattanooga Gas Company, produce copies of all workpapers, cross referenced to source documents, which support the CAPD's proposed rate design.

Response No. 12: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, no rate design has been proposed. If a rate design is proposed, it will be attached to or made part of pre-filed testimony from a CAPD witness which will be provided to the Company. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits. Furthermore, any assessment of the differences between rate designs is the legal burden of each party and is, therefore, the work product of the party and subject to the work product doctrine and attorney client privilege limiting discovery.

Reasons to Compel: This request does not seek information that is overly broad or burdensome. The information requested is necessary to verify or disprove any rate design proposed by the CAPD.

Request No. 13: Identify any paid consultant(s) that the CAPD has or will consult with regarding this docket.

Response No. 13: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any consultant would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The Company asserts that disclosure of the identity of a consultant would not violate the attorney-client privilege.

Request No. 14: Identify any consultants that the CAPD contacted regarding this docket, but did not hire.

Response No. 14: The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any consultant would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

Reasons to Compel: The Company asserts that disclosure of the identity of a potential witness would not violate the attorney-client privilege.

Request No. 15: Identify each witness that will testify on behalf of the CAPD in this docket.

Response No. 15: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared, it will be provided to the Company when pre-filed testimony is filed well in advance of the hearing on the merits. In the spirit of cooperation, however, the CAPD would state that it is considering using the following persons as witnesses:

Steve Brown
Economist
PO Box 20207
Nashville, TN 37202-0207
615 741-3132

Daniel W. McCormac
Coordinator of Analysts
PO Box 20207
Nashville, TN 37202-0207
615 741-2935

Mark H. Crocker
Analyst
PO Box 20207
Nashville, TN 37202-0207
615 741-8727

Mike Chrysler
Analyst
PO Box 20207
Nashville, TN 37202-0207
615 741-8726

Reasons to Compel: As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations.

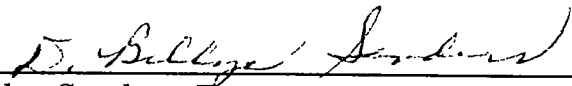
Request No. 16: Identify the issues that each witness named in question 15 will address in his/her testimony.

Response No. 16: The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared and filed, it will be provided to the Company. This testimony will contain the issues to be covered by the witness. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.

Reasons to Compel: As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to propound additional discovery requests after the testimony is filed.

Respectfully Submitted,

Chattanooga Gas Company

By: 

D. Billye Sanders, Esq.

Waller, Lansden, Dortch & Davis, PLLC

Nashville City Center

511 Union Street, Suite 2100

Nashville, Tennessee 37219-1760

Its Attorney

CERTIFICATE OF SERVICE

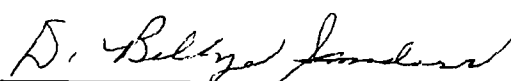
I hereby certify that I have on this 17th day of May, 2004, served the foregoing pleading either by fax, overnight delivery service or first class mail, postage prepaid, to all parties of record at their addresses shown below:

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